

IPW



Practitioner's Docket No. AXM-666

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Edward C. Benzel et al

Application No.: 10/731,942

Group No.: 3733

Filed: December 10, 2003

Examiner: J.N. Harvey

For: **METHOD FOR REPLACING A DAMAGED SPINAL DISC**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

AMENDMENT TRANSMITTAL

Warning: Failure to file a complete response in compliance with § 1.135(c) leads to a reduction in patent term adjustment - See § 1.704(c)(7).

1. Transmitted herewith is an amendment for this application.

STATUS

2. Applicant is

- ☒ a small entity. A statement:
- ☐ is attached.
- ☐ was already filed.
- ☐ other than a small entity.

CERTIFICATION UNDER 37 CFR §§ 1.8(a) and 1.10*

(When using Express Mail, the Express Mail label number is mandatory; Express Mail certification is optional.)

I hereby certify that, on the date shown below, this correspondence is being:

MAILING

☒ deposited with the United States Postal Service in an envelope addressed to Commissioner for Patents
P.O. Box 1450, Alexandria, VA 22313-1450

37 C.F.R. § 1.8(a)

☒ with sufficient postage as first class mail.

37 C.F.R. § 1.10*

☐ as "Express Mail Post Office to Addressee" Mailing Label No. _____
(mandatory)

TRANSMISSION

☐ transmitted by facsimile to the Patent and Trademark Office, (703) _____

Signature

Date: November 5, 2008

Deborah Denn

(type or print name of person certifying)

*Only the date of filing (§ 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under § 1.8 continues to be taken into account in determining timeliness. See § 1.703(f). Consider "Express Mail Post Office Addressee" (§ 1.10) or facsimile transmission (§ 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

EXTENSION OF TERM

NOTE: *"Extension of Time in Patent Cases (Supplement Amendments) – If a timely and complete response has been filed after a Non-Final Office Action, an extension of time is not required to permit filing and/or entry of an additional amendment after expiration of the shortened statutory period.*

If a timely response has been filed after a Final Office Action, an extension of time is required to permit filing and/or entry of a Notice of Appeal or filing and/or entry of an additional amendment after expiration of the shortened statutory period unless the timely-filed response placed the application in condition for allowance. Of course, if a Notice of Appeal has been filed within the shortened statutory period, the period has ceased to run." Notice of December 10, 1985 (1061 O.G. 34-35).

NOTE: See 37 CFR 1.645 for extensions of time in interference proceedings, and 37 CFR 1.550(c) for extensions of time in reexamination proceedings.

NOTE: 37 C.F.R. § 1.740(b) "...an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the date after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has not effect on the three-month period set forth in this paragraph."

3. The proceedings herein are for a patent application and the provisions of 37 C.F.R. § 1.136 apply.

(complete (a) or (b), as applicable)

- (a) ☐ Applicant petitions for an extension of time under 37 C.F.R. § 1.136
(fees: 37 C.F.R. § 1.17(1)-(4) for the total number of months
check below:

Extension (months)	Fee for other than <u>small entity</u>	Fee for <u>small entity</u>
<input type="checkbox"/> one month	\$ 130.00	\$ 65.00
<input type="checkbox"/> two months	\$ 490.00	\$245.00
<input type="checkbox"/> three months	\$ 1,110.00	\$555.00
<input type="checkbox"/> four months	\$ 1,730.00	\$865.00

Fee \$ _____

If an additional extension of time is required, please consider this a petition therefor.

(check and complete the next time, if applicable)

- ☐ An extension for _____ months has already been secured. The fee paid therefor of \$_____ is deducted from the total fee due for the total months of extension now requested.

Extension fee due with this request \$ _____

OR

- (b) ☐ Applicant believes that no extension of term is required. However, this is a conditional petition being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition for extension of time.

FEE FOR CLAIMS

4. The fee for claims (37 C.F.R. § 1.16(b)-d)) has been calculated as shown below:

(Col. 1)		(Col. 2)	(Col. 3)	SMALL ENTITY		OTHER THAN A SMALL ENTITY	
CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NO. PREVIOUSLY PAID FOR	PRESENT EXTRA	RATE	ADDIT. FEE .	OR	ADDIT. FEE
TOTAL	*39	MINUS ** 34	=5	X\$52 =	\$		X\$ 26= \$130.00
INDEP.	*2	MINUS ***3	=	X\$220=	\$		X\$ 110= \$-0-
<input type="checkbox"/> FIRST PRESENTATION OF MULTIPLE DEP. CLAIM			=	X\$390=	\$		X\$195= \$
				TOTAL		OR	TOTAL
				ADDIT. FEE	\$		ADDIT. FEE \$

* If the entry in Col. 1 is less than entry in Col. 2, write "0" in Col. 3.
 ** If the "Highest No. Previously Paid For" IN THIS SPACE is less than 20, enter "20".
 *** If the "Highest No. Previously Paid For" IN THIS SPACE is less than 3, enter "3".
 The "Highest No. Previously Paid For" (Total or Indep.) is the highest number found in the appropriate box
 In Col. 1 of a prior amendment or the number of claims originally filed.

WARNING "After final rejection or action (§1.113) amendments may be made canceling claims or complying with any requirement of form which has been made." 37 C.F.R. § 1.116(a)(emphasis added).

(complete (c) or (d), as applicable)

(c) ☐ No additional fee for claims is required.

OR

(d) ☒ Total additional fee for claims required **\$130.00**

FEE PAYMENT

☐ Attached is a ☐ check ☐ money order in the amount of \$_____

☒ Authorization is hereby made to charge the amount of **\$130.00** _____

☐ to Deposit Account No. **20-0090**.

☒ to Credit card as shown on the attached credit card information authorization form PTO-2038.

WARNING: Credit card information should *not* be included on this form as it may become public.

☒ Charge any additional fees required by this paper or credit any overpayment in the manner authorized above.

A duplicate of this paper is attached.

FEE DEFICIENCY

NOTE: *If there is a fee deficiency and there is no authorization to charge an account, additional fees are necessary to cover the additional time consumed in making up the original deficiency. If the maximum, six-month period has expired before the deficiency is noted and corrected, the application is held abandoned. In those instances where authorization to charge is included, processing delays are encountered in returning the papers to the PTO Finance Branch in order to apply these charges prior to action on the cases. Authorization to charge the deposit account for any fee deficiency should be checked. See the Notice of April 7, 1986 (1065 O.G. 31-33).*

6. ☒ If any additional extension and/or fee is required, charge Deposit Account No. 20-0090.

AND/OR

- ☒ If any additional fee for claims is required, charge Deposit Account No. 20-0090.



SIGNATURE OF PRACTITIONER

JAMES L. TAROLLI

(type or print name of attorney)

Reg. No.: 36,029

Tel. No.:(216) 621-2234

Tarolli, Sundheim, Covell
& Tummino L.L.P.
1300 East Ninth Street, Suite 1700
Cleveland, OH 44114

P.O. Address
26,294

Customer No.:



I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE U.S. POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO: COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450

[Handwritten Signature]
SIGNATURE

11-5-08
11-5-08
DATE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Benzel et al.
Serial No. : 10/731,942
Filing Date : December 10, 2003
For : METHOD FOR REPLACING A
DAMAGED SPINAL DISC
Group Art Unit : 3733
Examiner : Julianna Nancy Harvey
Attorney Docket No. : AXM-6666

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

AMENDMENT B

Sir:

This amendment is in response to the Office Action mailed August 6, 2008. Reconsideration of the above-identified patent application in view of this amendment and the remarks below is respectfully requested.

Amendments to the Claims are reflected in the listing of claims that begins on page 2 of this paper.

Remarks/Arguments begin on page 13 of this paper.

11/10/2008 WASFAW1 00000064 10731942

01 FC:2202

130.00 0P